Nos. 17-765 and 17-766

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

VICTOR J. STITT, II

UNITED STATES OF AMERICA, PETITIONER

v.

JASON DANIEL SIMS

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE SIXTH AND EIGHTH CIRCUITS

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation can qualify as "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii).

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 2
Statutory provisions involved 2
Statement 2
A. Legal background 3
B. Proceedings in *Stitt*, No. 17-765 6
1. *Offense conduct and initial proceedings* 6
2. *En banc proceedings* 7
C. Proceedings in *Sims*, No. 17-766 11
Summary of argument 13
Argument:
Burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation qualifies as "burglary" under the ACCA 16
A. *Taylor*'s definition of generic "burglary" encompasses the invasion of nonpermanent or mobile dwellings 17
1. The contemporary state-law definitions reflected in *Taylor*'s definition typically covered burglary of nonpermanent or mobile dwellings 18
2. The secondary sources on which *Taylor* relied confirm that ACCA burglary covers nonpermanent or mobile dwellings 20
3. *Taylor*'s discussion of the ACCA's design reinforces that its definition of burglary covers nonpermanent or mobile dwellings 24
4. *Taylor*'s rejection of limiting constructions of "burglary" supports a similar rejection of the limiting construction adopted below 27
B. The decisions below misconstrued the ACCA and this Court's decisions 31

Table of Contents—Continued: Page

Conclusion 39
Appendix A — Statutory provisions 1a
Appendix B — State burglary statutes at the time of 18 U.S.C. 924(e)(2)(B)(ii)'s enactment 21a

TABLE OF AUTHORITIES

Cases:

Central Va. Cmty. Coll. v. *Katz*, 546 U.S. 356 (2006) 34
Cohens v. *Virginia*, 19 U.S. (6 Wheat.) 264 (1821) 34
Collins v. *Virginia*, 138 S. Ct. 1663 (2018) 27
Descamps v. *United States*, 570 U.S. 254 (2013) 6
Favro v. *State*, 46 S.W. 932 (Tex. Crim. App. 1898) 19
Gonzales v. *Duenas-Alvarez*, 549 U.S. 183 (2007) 8, 36
Johnson v. *United States*, 135 S. Ct. 2551 (2015) 7
Kanaras v. *State*, 460 A.2d 61 (Md. Ct. Spec. App. 1983) 19
Mathis v. *United States*, 136 S. Ct. 2243 (2016) 6, 8, 36
Nijhawan v. *Holder*, 557 U.S. 29 (2009) 8, 36
People v. *Netznik*, 383 N.E.2d 640 (Ill. App. Ct. 1978) 19
People v. *Winhoven*, 237 N.W.2d 540 (Mich. Ct. App. 1975) 19
Reiter v. *Sonotone Corp.*, 442 U.S. 330 (1979) 33
Richardson v. *State*, 888 S.W.2d 822 (Tex. Crim. App. 1994) 35
Shepard v. *United States*, 544 U.S. 13 (2005) 6, 8, 36, 38
Smith v. *United States*, 877 F.3d 720 (7th Cir. 2017), petition for cert. pending, No. 17-7517 (filed Jan. 17, 2018) 22, 31
State v. *Pierre*, 320 So. 2d 185 (La. 1975) 24
Taylor v. *United States*, 495 U.S. 575 (1990) ..... *passim*

Cases—Continued: Page

United States v. *Grisel*, 488 F.3d 844 (9th Cir.), cert. denied, 552 U.S. 970 (2007) 23, 37
United States v. *Herrold*, 883 F.3d 517, (5th Cir. 2018), petition for cert. pending, No. 17-1445 (filed Apr. 18, 2018), and petition for cert. pending, No. 17-9127 (filed May 21, 2018) 29, 30, 31, 32, 36
United States v. *Lamb*, 847 F.3d 928 (8th Cir. 2017), cert. denied, 138 S. Ct. 1438 (2018) 13
United States v. *Leonard*, 868 F.2d 1393 (5th Cir. 1989), cert. denied, 496 U.S. 904 (1990) 35
United States v. *Nance*, 481 F.3d 882 (6th Cir.), cert. denied, 552 U.S. 1052 (2007) 7
United States v. *Priddy*, 808 F.3d 676 (6th Cir. 2015) 7
United States v. *Rivera-Oros*, 590 F.3d 1123 (10th Cir. 2009) 27
United States v. *Spring*, 80 F.3d 1450 (10th Cir.), cert. denied, 519 U.S. 963 (1996) 27
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 34

Constitution, statutes, and guideline:

U.S. Const. Amend. IV 27
Armed Career Criminal Act of 1984, Pub. L. No. 98-473, Tit. II, ch. 18, 98 Stat. 2185 ..... 3, 25
18 U.S.C. 924(e)(2)(B) 4, 10a
18 U.S.C. 924(e)(2)(B)(ii) 4, 25, 10a
18 U.S.C. App. 1202(a) (Supp. III 1985) 3
18 U.S.C. App. 1202(c)(9) (Supp. III 1985) 3
Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39 4

Statutes and guideline—Continued: Page

Firearm Owners' Protection Act,
Pub. L. No. 99-308, § 104(b), 100 Stat. 459 ..... 3, 25
18 U.S.C. 922(g)(1) 2, 3, 6, 11
Ark. Code Ann. (2013):
§ 5-39-101 ..... 12, 17a
§ 5-39-101(1) (Michie 1997) 12, 16a
§ 5-39-101(4)(A) 12, 13, 32, 19a
§ 5-39-201 ..... 12, 20a
§ 5-39-201(a)(1) (Michie 1997) 12, 19a
§ 5-39-201(a)(1) 32, 20a
Fla. Stat. (1985):
§ 810.02(1) 23, 25a
§ 810.011(1) 23
§ 810.011(3) 23
Ga. Code. Ann. § 26-1601 (1983) 23
Iowa Code Ann. § 702.12 (West 2013) 36
Mo. Rev. Stat. § 560.070 (1969) (repealed) 35
Tenn. Code Ann. (Supp. 2001):
§ 39-14-401(1) 7, 14a
§ 39-14-401(1)(A)-(B) 32, 14a
§ 39-14-401(1)(C) 32, 14a
§ 39-14-403(a) (1997) 6, 32, 16a
Tex. Penal Code Ann. (West 1989):
§ 30.01 35
§ 30.02 35
§ 30.03 35
§ 30.04 35
Wis. Stat. Ann.:
§ 340.01(33m) (West 1971) 24
§ 943.10(1)(e) (West 1982) 24
Sentencing Guidelines § 4B1.2 (2015) 10

Miscellaneous: Page

American FactFinder, U.S. Census Bureau, *Selected Housing Characteristics, 2011-2015 American Community Survey 5-Year Estimates*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk 26

Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Victimization During Household Burglary* (Sept. 2010), https://www.bjs.gov/content/pub/pdf/vdhb.pdf 26

H.R. Rep. No. 1073, 98th Cong., 2d Sess. (1984) 3, 25

2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* (1986) ..... *passim*

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William P. McCarty, *Trailers and Trouble? An Examination of Crime in Mobile Home Communities*, Cityscape: A Journal of Policy Development and Research, Vol. 12, No. 2 (2010), https://www.huduser.gov/portal/periodicals/cityscpe/vol12num2/ch7.pdf 26

Model Penal Code (1980):

§ 221.0(1) 5, 14, 21

§ 221.1(1) 5, 14, 21

§ 221.1 cmt. 3(b) 21, 22

S. Rep. No. 190, 98th Cong., 1st Sess. (1983) 3, 17, 25

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OPINIONS BELOW

The opinion of the en banc court of appeals in *United States* v. *Stitt*, No. 17-765 (*Stitt* Pet. App. 1a-55a) is reported at 860 F.3d 854. The opinion of the court of appeals panel (*Stitt* Pet. App. 56a-64a) is not published in the Federal Reporter but is reprinted at 637 Fed. Appx. 927.

The opinion of the court of appeals in *United States* v. *Sims*, No. 17-766 (*Sims* Pet. App. 1a-7a) is reported at 854 F.3d 1037.

JURISDICTION

The judgment of the court of appeals in *Stitt* was entered on June 27, 2017. On September 13, 2017, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including October 25, 2017. On October 13, 2017, Justice Kagan further extended the time to and including November 24, 2017, and the petition was filed on November 21, 2017. The petition for a writ of certiorari was granted on April 23, 2018.

The judgment of the court of appeals in *Sims* was entered on April 27, 2017. A petition for rehearing was denied on August 3, 2017 (*Sims* Pet. App. 8a). On October 20, 2017, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including December 1, 2017, and the petition was filed on November 21, 2017. The petition for a writ of certiorari was granted on April 23, 2018.

The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-20a.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Tennessee, respondent Stitt was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). He was sentenced to 290 months of imprisonment, to be followed by four years of supervised release. *Stitt* Judgment 1-2. A panel of the court of appeals affirmed, but the en banc court vacated that decision and remanded for resentencing. *Stitt* Pet. App. 1a-64a.

Following a guilty plea in the United States District Court for the Eastern District of Arkansas, respondent Sims was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). He was sentenced to 210 months of imprisonment, to be followed by three years of supervised release. *Sims* Judgment 1-3. The court of appeals vacated the sentence and remanded for resentencing. *Sims* Pet. App. 1a-7a.

A. Legal Background

1. In 1984, concerned that "a large percentage" of "crimes involving theft or violence" were "committed by a very small percentage of repeat offenders," Congress supplemented state law-enforcement efforts by "provid[ing] enhanced penalties for certain persons possessing firearms after three previous convictions" for certain crimes. H.R. Rep. No. 1073, 98th Cong., 2d Sess. 1 (1984) (House Report); see S. Rep. No. 190, 98th Cong., 1st Sess. 1, 5 (1983) (Senate Report). As originally enacted, the Armed Career Criminal Act of 1984 (ACCA) prescribed a 15-year minimum sentence for any person convicted of possession of a firearm by a felon following three prior convictions "for robbery or burglary." Pub. L. No. 98-473, Tit. II, ch. 18, 98 Stat. 2185 (18 U.S.C. App. 1202(a) (Supp. III 1985)) (repealed in 1986 by the Firearm Owners' Protection Act (FOPA), Pub. L. No. 99-308, § 104(b), 100 Stat. 459).

Congress focused on burglary and robbery because of their frequency and connection to violence. See, *e.g.*, Senate Report 3-5. The 1984 version of the ACCA defined burglary as "any felony consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense." 18 U.S.C. App.

1202(c)(9) (Supp. III 1985). "Congress singled out burglary * * * because of its inherent potential for harm to persons." *Taylor* v. *United States*, 495 U.S. 575, 588 (1990).

In 1986, Congress amended the ACCA to "expand[] the predicate offenses triggering the sentence enhancement from 'robbery or burglary' to 'a violent felony or serious drug offense.'" *Taylor*, 495 U.S. at 582; see Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39; 18 U.S.C. 924(e)(2)(B). The amended version of the statute, in effect today, defines a "violent felony" to include, *inter alia*, any crime punishable by more than one year that "is burglary, arson, or extortion, [or] involves use of explosives." 18 U.S.C. 924(e)(2)(B)(ii). But while retaining "burglary" as a specifically listed ACCA predicate, Congress deleted the previous statutory definition of that term.

2. In *Taylor*, *supra*, this Court was "called upon to determine the meaning of the word 'burglary' as it is used" in the amended version of the ACCA. 495 U.S. at 577. The Court held that "a person has been convicted of burglary for purposes of [an ACCA] enhancement if he is convicted of any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599.

The Court in *Taylor* explained that its definition reflects "the generic sense in which the term [burglary] is now used in the criminal codes of most States." 495 U.S. at 598. The Court also explained that its definition of burglary "approximates" the one in the Model Penal Code, *id.* at 598 n.8, which, since 1980, has defined "bur-

glary" as the unauthorized entry of a "building or occupied structure * * * with purpose to commit a crime therein," Model Penal Code § 221.1(1) (1980). The term "occupied structure" in the Model Penal Code encompasses "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." *Id.* § 221.0(1). The Court in *Taylor* also referenced a leading criminal law treatise, which recognized that contemporary burglary statutes "typically describe the place [that is burglarized] as a 'building' or 'structure,'" 495 U.S. at 598 (quoting 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 8.13(c) (1986) (LaFave)), and that "these terms are often broadly construed," LaFave § 8.13(c).

Taylor instructed courts to employ a "categorical approach" to determine whether a prior conviction satisfies its definition of "burglary." 495 U.S. at 600. Under that approach, courts examine "the statutory definition[]" of the previous crime of conviction in order to determine whether it necessarily reflects conduct that constitutes the "generic" form of burglary referenced in the ACCA. *Ibid.* If the definition in the statute of conviction "substantially corresponds" to, or is narrower than, "generic" burglary as defined in *Taylor*, the prior offense categorically qualifies as a predicate conviction under the ACCA. *Id.* at 602. But if the statute of conviction is broader than the ACCA definition, the defendant's prior conviction does not qualify as ACCA burglary unless, under what is known as the "modified categorical approach," (1) the statute is "divisible" into multiple crimes with different elements, and (2) the government can show (using a limited set of record documents) that the jury necessarily found, or the defendant necessarily

admitted, the elements of generic burglary. See *Mathis* v. *United States*, 136 S. Ct. 2243, 2249 (2016); *Descamps* v. *United States*, 570 U.S. 254, 264 (2013); *Shepard* v. *United States*, 544 U.S. 13, 26 (2005).

B. Proceedings In *Stitt*, No. 17-765

1. Offense conduct and initial proceedings

In 2011, during an argument with his girlfriend, respondent Stitt "tried to shove a loaded handgun into [her] mouth while threatening to kill her." *Stitt* Pet. App. 2a. A neighbor called the police, and Stitt fled to his mother's home. *Ibid.* Law enforcement officers followed Stitt, who surrendered to the authorities after a brief foot chase. *Ibid.*; see *id.* at 57a. Detectives recovered a .22-caliber handgun lying on the ground within Stitt's reach. *Id.* at 57a; see *id.* at 2a.

A federal grand jury indicted Stitt on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), and a jury found him guilty of that crime. *Stitt* Pet. App. 2a, 57a. At sentencing, the district court determined that Stitt had nine prior state convictions that qualified as "violent felonies" under the ACCA, *id.* at 2a, 57a-58a, including six prior convictions for aggravated burglary under Tennessee Code Annotated § 39-14-403(a) (1997). That statute criminalizes the burglary of any "[h]abitation," defined as (A) "any structure, including buildings, module units, mobile homes, trailers, and tents, which is designed or adapted for the overnight accommodation of persons"; (B) any "self-propelled vehicle that is designed or adapted for the overnight accommodation of persons and is actually occupied at the time of initial entry by the defendant"; and (C) "each separately secured or occupied portion of the structure or vehicle and each structure appurtenant

to or connected with the structure or vehicle." *Id.* § 39-14-401(1) (Supp. 2001). The district court applied the ACCA and sentenced Stitt to 290 months of imprisonment. *Stitt* Pet. App. 2a.

A panel of the court of appeals affirmed Stitt's ACCA sentence. *Stitt* Pet. App. 56a-64a. The government acknowledged that this Court's decision in *Johnson* v. *United States*, 135 S. Ct. 2551, 2555-2556 (2015)—which held a distinct portion of the ACCA's definition of "violent felony," known as the "residual clause," to be unconstitutional—"invalidated the violent-felony status of three of [Stitt's] prior offenses, leaving only his six [Tennessee] aggravated-burglary convictions at issue." *Stitt* Pet. App. 2a-3a. Relying on circuit precedent, the court of appeals determined that a conviction under the Tennessee aggravated-burglary statute categorically qualifies as a conviction for generic burglary under the ACCA and that Stitt was therefore properly sentenced as an armed career criminal. *Id.* at 64a (citing *United States* v. *Priddy*, 808 F.3d 676, 684 (6th Cir. 2015); *United States* v. *Nance*, 481 F.3d 882, 887 (6th Cir.), cert. denied, 552 U.S. 1052 (2007)).

2. En banc proceedings

The court of appeals granted rehearing en banc. Over the dissent of six of the 15 judges who participated in the proceeding, the en banc majority overturned prior circuit law, concluded that the set of "habitation[s]" covered by the Tennessee aggravated-burglary statute extends beyond the "building[s] or other structure[s]" covered by the majority's interpretation of generic burglary, and remanded for the imposition of a non-ACCA sentence. *Stitt* Pet. App. 1a-55a.

a. The en banc majority concluded that no nonpermanent or mobile structure of any sort, including the

structures adapted for habitation that are protected by the Tennessee aggravated-burglary statute, can fit within *Taylor*'s reference to a "building or other structure," 495 U.S. 598. The majority reasoned that "[a]lthough the Court left 'building or other structure' undefined" in *Taylor*, "it has confirmed repeatedly that vehicles and movable enclosures (e.g., railroad cars, tents, and booths) fall outside the definitional sweep" of that phrase. *Stitt* Pet. App. 4a; see *id.* at 4a-5a (citing *Mathis*, 136 S. Ct. at 2250; *Nijhawan* v. *Holder*, 557 U.S. 29, 35 (2009); *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 186-187 (2007); *Shepard*, 544 U.S. at 15-16; *Taylor*, 495 U.S. at 599); see also *id.* at 6a-7a. The majority discounted the particular habitation-related limitations of the Tennessee statute on the theory that *Taylor*'s definition of generic burglary "emphasizes a place's form and nature—not its intended use or purpose." *Id.* at 5a; see *id.* at 5a-7a.

The majority recognized that *Taylor* had described what "Congress meant by 'burglary'" in the ACCA as "the generic sense in which the term is now used in the criminal codes of most states." *Stitt* Pet. App. 7a (quoting *Taylor*, 495 U.S. at 598). And the majority took note of a multijurisdictional analysis submitted by the government for the purpose of illustrating that, when *Taylor* was decided, the "overwhelming majority of states included vehicles and movable enclosures in their burglary statutes" and that "a little more than half the states' burglary statutes specifically 'covered movable structures adapted for specific purposes such as overnight accommodation, business, or education.'" *Id.* at 7a-8a. The majority also recognized that *Taylor* had likened the ACCA definition of burglary to the Model Pe-

nal Code's definition, which included "occupied structures" of the sort covered by the Tennessee law. *Id.* at 8a. But the majority nevertheless viewed *Taylor*'s "clear and unambiguous language," and the Court's "repetition of similar language in later cases," to "exclude[] *all* things mobile or transitory." *Ibid.*

b. Five judges joined one or both of two concurrences.

Judge Boggs authored a concurrence disagreeing with certain points in the dissent, namely, that the ACCA definition of burglary is "broader" than the common-law definition, that the common-law definition applied to dwellings including vehicles adapted for overnight accommodation, and that burglary of a habitation "was a kind of burglary that the *Taylor* Court would have counted as a 'generic' ACCA burglary." *Stitt* Pet. App. 16a-17a; see *id.* at 19a-26a. Although Judge Boggs viewed the majority's result as "compelled by *Taylor*," *id.* at 26a (emphasis omitted), he nonetheless acknowledged that the majority's holding would (in conjunction with other ACCA decisions) lead to "bizarre results." *Ibid.*

Judge White joined Judge Boggs's concurrence and also filed a separate concurring opinion arguing, in response to the dissent, that common-law burglary did not protect tents and vehicles. *Stitt* Pet. App. 33a-43a. Judge White acknowledged, however, that "[w]hether Tennessee's aggravated-burglary offense and similarly-defined offenses fall within Congress's concept of generic burglary" is a "difficult" question with "[p]ersuasive arguments * * * on both sides." *Id.* at 43a; see *ibid.* ("For me, the Model Penal Code's expansive definition of 'occupied structure' provides the strongest support for the dissent."). Like Judge Boggs, *id.* at 26a,

Judge White observed that the court of appeals' decision would "lead[] to some puzzling results." *Id.* at 42a.

c. Judge Sutton, joined by five other judges, dissented. *Stitt* Pet. App. 43a-55a. He reasoned that Tennessee's aggravated-burglary crime necessarily qualified as generic burglary, because generic burglary is broader than the common-law definition of burglary, and the locational element of common-law burglary encompassed "dwellings"—including the sorts of habitations covered by the Tennessee law. *Id.* at 43a-46a. Judge Sutton explained that the concurring opinions' contrary assertions erroneously looked to Blackstone-era common law instead of the "common law in 1984, when Congress enacted the Armed Career Criminal Act." *Id.* at 53a. "By then," he observed, "the consensus of the state courts—the true authorities on American common law—was that tents and vehicles designed and used for human accommodation count as dwellings." *Ibid.* (citing examples).

Judge Sutton also observed that Tennessee's aggravated-burglary offense (1) mirrors the Model Penal Code's definition of "occupied structure," which *Taylor* cited in describing the elements of generic burglary; (2) matches the traditional meaning of "dwelling house" in *Black's Law Dictionary*; and (3) is consistent with federal cases holding that the term "burglary of a dwelling," as used in former Sentencing Guidelines § 4B1.2 (2015), reached vehicles and tents designed for human habitation. *Stitt* Pet. App. 46a-47a (citations omitted). Judge Sutton reasoned that because "*Taylor* tells us that burglary of a dwelling is always generic, and a uniform body of precedent tells us that Tennessee's definition of 'habitation' applies only to dwellings[,] * * * [t]he statute is generic" and Stitt's

convictions under it qualify as violent felonies. *Id.* at 47a-48a.

Judge Sutton criticized the majority for taking out of context statements by this Court that burglary statutes that "includ[e] places, such as automobiles and vending machines" cover more locations than generic burglary. *Stitt* Pet. App. 48a (quoting *Taylor*, 495 U.S. at 599). He observed that those statements had not addressed statutes limited to the burglary of dwellings. *Id.* at 48a-49a. And he admonished the majority for "isolat[ing] three words from *Taylor*, lift[ing] them from their context, and in the process eliminat[ing] common law burglary of a dwelling, which *Taylor* tells us * * * is the heart of the crime," from the scope of ACCA burglary. *Id.* at 50a-51a.

Judge Sutton added that that the majority's conclusion "produces th[e] head-scratching outcome" that "Tennessee's lesser crime of 'burglary of a building' qualifies as generic burglary while aggravated burglary"—*i.e.*, burglary of a habitation—"does not." *Stitt* Pet. App. 50a. He also observed that, under the majority's view, a statute that covers "burglary of unoccupied * * * tool sheds" would constitute ACCA burglary, but a statute that "covers places where people regularly lodge" would not. *Ibid.*

C. Proceedings In *Sims*, No. 17-766

In January 2014, respondent Sims broke into a home in St. Francis County, Arkansas, and stole a rifle. *Sims* Pet. for Reh'g 3. A federal grand jury indicted Sims on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), and Sims pleaded guilty to that crime. *Sims* Pet. App. 1a.

At sentencing, the district court determined that, in addition to two prior convictions for "serious drug

offenses" under the ACCA, Sims had two prior convictions for "violent felonies," *Sims* Pet. App. 2a—specifically, two convictions for residential burglary under Arkansas Code Annotated § 5-39-201(a)(1). That statute criminalizes burglary of a "residential occupiable structure," *ibid.*, defined as "a vehicle, building or other structure: (i) In which any person lives; or (ii) That is customarily used for overnight accommodation of a person whether or not a person is actually present," *id.* § 5-39-101(4)(A) (2013).[1] The court applied the ACCA and sentenced Sims to 210 months of imprisonment. *Sims* Pet. App. 3a.

The court of appeals vacated Sims's sentence and remanded for resentencing. *Sims* Pet. App. 1a-7a. As in the district court, Sims did not contest that his two prior drug offenses constituted "serious drug offenses" under the ACCA, see *id.* at 2a-3a, but he argued that his Arkansas convictions for residential burglary did not qualify as "violent felon[ies]," see *id.* at 4a. The court of appeals agreed with Sims, concluding that "Arkansas residential burglary categorically sweeps more broadly than generic burglary" because it covers vehicles used or adapted for overnight accommodation. *Id.* at 6a. In

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[1] The court of appeals cited the 2013 version of Arkansas Code Annotated §§ 5-39-101 and 5-39-201. See *Sims* Pet. App. 3a. The versions of those provisions that were in place at the time of Sims's burglary offenses differed slightly. In particular, Section 5-39-101 defined a "[r]esidential occupiable structure" as "a vehicle, building, or other structure (A) Where any person lives; or (B) Which is customarily used for overnight accommodation of persons whether or not a person is actually present." Ark. Code Ann. § 5-39-101(1) (Michie 1997). Both the 2013 and 1997 versions of the statutes are included in the appendix to this brief. App., *infra*, 16a-20a. Because the changes are immaterial to the question presented, this brief cites the 2013 versions of the statutes cited by the court of appeals.

the court's view, no burglary statute encompassing vehicular burglary can qualify as "burglary" under the ACCA, even if the statute is limited to burglary of vehicles used as homes. *Ibid.*

The court of appeals acknowledged that the government's position—that the Arkansas statute qualifies as generic burglary because it is limited to vehicles "'[i]n which any person lives'" or "'[t]hat [are] customarily used for overnight accommodation'"—is "not an unreasonable one" and that "this issue has divided circuit courts." *Sims* Pet. App. 5a (quoting Ark. Code Ann. § 5-39-101(4)(A) (2013)) (brackets in original). But the court stated that it was "not writing on a blank slate." *Ibid.* Instead, the court deemed itself bound by its decision in *United States* v. *Lamb*, 847 F.3d 928 (8th Cir. 2017), cert. denied, 138 S. Ct. 1438 (2018), which had stated that a Wisconsin statute "encompasse[d] a broader range of conduct than generic burglary as defined in *Taylor*" because it covered "burglary of railroad cars, ships, trucks, and motor homes." *Id.* at 931. The court concluded that *Lamb*'s reference to motor homes "foreclose[d] the Government's argument" that Arkansas residential burglary—which is narrower than the Wisconsin statute in many respects but likewise covers motor homes—categorically fits within the generic *Taylor* definition. *Sims* Pet. App. 6a.

The court of appeals denied the government's petition for rehearing en banc, over the dissent of two judges. *Sims* Pet. App. 8a.

SUMMARY OF ARGUMENT

The courts of appeals erred in excising burglary of a nonpermanent or mobile structure that is used or adapted for overnight accommodation from the definition of "burglary" under the ACCA. Their holdings are

inconsistent with this Court's decision in *Taylor* v. *United States*, 495 U.S. 575 (1990); draw improper distinctions between homes a burglar might target for invasion; and all but nullify a critical statutory term.

A. In *Taylor*, this Court construed "burglary" under the ACCA in "the generic sense in which the term is now used in the criminal codes of most States" to include "any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." 495 U.S. at 598-599. The "criminal codes of most States" in 1986—specifically, 43 States, plus the District of Columbia—had burglary laws protecting the types of mobile or nonpermanent homes at issue here. *Taylor*'s definition of burglary thus necessarily reflects that overwhelming consensus.

Taylor, moreover, likened its definition of burglary to the Model Penal Code's, which since 1980 has encompassed burglary of a "building or occupied structure," with "occupied structure" defined as "any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present," Model Penal Code §§ 221.0(1), 221.1(1) (1980); see *Taylor*, 495 U.S. at 598 n.8. *Taylor* also relied on Professor LaFave's treatise on the substantive criminal law, which emphasized the breadth of the terms "building" and "structure" in the burglary context and described the burglary statutes of 13 States that covered nonpermanent or mobile structures adapted or used for overnight accommodation as "typical[]." LaFave § 8.13(c); see *Taylor*, 495 U.S. at 598.

Taylor also emphasized that Congress, in enacting and expanding the ACCA, expressed specific concern

with burglary's "inherent potential for harm to persons," which it recognized to be particularly acute in the context of a home invasion. 495 U.S. at 588. The inherent danger of a home invasion exists to an equal, if not greater, degree when a burglar invades a mobile home as when he invades a mansion. Nothing suggests that Congress disagreed with the predominant view of the States that each homeowner deserves the protection of the burglary laws, or that Congress otherwise saw fit to differentiate between types of homes when it used the term "burglary" in its "generic sense," *id.* at 598.

Far from limiting "burglary" to only a subset of homes, *Taylor* deliberately adopted a definition of burglary that went well ***beyond*** the home invasions that were the "core" of traditional common-law burglary. 495 U.S. at 580 n.3, 593. As Judge Sutton recognized, *Taylor*'s modernization of the locational element of burglary to include "any building or structure," rather than simply a "dwelling house," necessarily reflects a modernization of the types of home invasions that have always been at the "heart of the crime." *Stitt* Pet. App. 51a. Indeed, targeting of a home is frequently a factor that triggers the application of "aggravated-burglary statutes," 495 U.S. at 596, which *Taylor* took as a given would qualify as "burglary" under the ACCA.

B. The Tennessee and Arkansas provisions at issue here are classic prohibitions against home invasions that are equivalent to or narrower than all but a small handful of state burglary statutes in existence in 1986. The courts of appeals' reasons for nonetheless excluding them from the ACCA do not withstand scrutiny.

The courts below seized on *Taylor*'s statement that "[a] few States' burglary statutes * * * define[d] burglary more broadly, *e.g.*, by * * * including places, such

as automobiles and vending machines, other than buildings," 495 U.S. at 599. But the Court's reference to "[a] few" burglary laws that cover "automobiles" cannot be construed to exclude the basic burglary statutes of the vast majority of States from a definition of "burglary" that was specifically based on the definition of burglary adopted by "most States," *id.* at 598. The majority in *Stitt* also read into *Taylor*'s definition of burglary a focus on "a place's form and nature" rather than "its intended use or purpose." *Stitt* Pet. App. 5a. Such a distinction, however, not only lacks support in *Taylor* itself, but also fails to recognize that form and function are inextricably intertwined, as when potential or actual human occupancy necessitates changes to layout or design that relate directly to the danger of a burglary. Finally, the majority in *Stitt* erroneously relied on the definition of "burglary" in the 1984 definition of the ACCA, which Congress deleted, to override the operative definition of burglary that *Taylor* in fact provided. That broad state-consensus-based definition should not be constr[illegible]d to cover only a handful of state crimes.

ARGUMENT

BURGLARY OF A NONPERMANENT OR MOBILE STRUCTURE THAT IS ADAPTED OR USED FOR OVERNIGHT ACCOMMODATION QUALIFIES AS "BURGLARY" UNDER THE ACCA

In *Taylor* v. *United States*, 495 U.S. 575 (1990), this Court defined "burglary" under the ACCA in accordance with the "sense in which the term is now used in the criminal codes of most States," *id.* at 598. The decisions below, however, have done the opposite. Both at the time the relevant language was enacted and now, most States have classified intrusion into nonpermanent or mobile structures adapted or used for overnight

accommodation as burglary. By construing "burglary" to exclude state laws that prohibit such conduct, the decisions below have cut out the "heart" of the crime—burglary of a habitation—and whittled the term down to near-obsolescence. *Stitt* Pet. App. 50a-51a (Sutton, J., dissenting). That result cannot be squared with *Taylor*; with Congress's specific focus on the potential for a violent confrontation between a burglar and the "occupants of [a] home," *Taylor*, 495 U.S. at 581 (quoting Senate Report 3-5); or with the widespread and commonsense judgment that home invasion is the same crime irrespective of whether the home is a trailer or a mansion.

A. *Taylor*'s Definition Of Generic "Burglary" Encompasses The Invasion Of Nonpermanent Or Mobile Dwellings

In *Taylor*, this Court explained that "burglary" under the ACCA includes "any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." 495 U.S. at 599. In formulating that definition, the Court relied on contemporary state laws, the Model Penal Code, and Professor LaFave's treatise on substantive criminal law. *Id.* at 598 & n.8. The Court emphasized Congress's intent to include a wide range of potentially violent invasions and rejected alternative definitions as too narrow. *Id.* at 593-597. Each of those considerations demonstrates that burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation is "burglary" under the ACCA.

1. The contemporary state-law definitions reflected in Taylor's definition typically covered burglary of nonpermanent or mobile dwellings

The Court in *Taylor* determined that "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States." 495 U.S. at 598. The Court explained that, "[a]lthough the exact formulations vary," an examination of such laws revealed a "generic, contemporary meaning of burglary." *Ibid.* It accordingly derived its definition of ACCA burglary from the "basic elements," including the locational elements, of contemporary state crimes. *Id.* at 599.

No definition of burglary reflecting the locational element of "most States," *Taylor*, 495 U.S. at 598, could exclude burglary of a nonpermanent or mobile structure adapted or used for overnight accommodation. As the government's appendix to this brief illustrates, at the time of the 1986 ACCA amendments, an overwhelming majority of jurisdictions—43 States and the District of Columbia—had at least one burglary statute that protected nonpermanent or mobile structures, such as vehicles, boats, and tents, adapted or used as dwellings, in addition to permanent residences and other buildings. App., *infra*, 21a-38a. Those 44 jurisdictions include 25 that specifically delineated such structures (and, in some cases, other specialized structures), as well as 19 that had expanded their statutes to nonpermanent or mobile structures more generally. See *ibid.* In the vast majority of cases, burglary of a nonpermanent or mobile structure adapted or used for overnight accommodation was covered by a State's basic burglary statute; often, such burglary also could

be charged under an aggravated or first-degree burglary statute that covered the burglary of a "dwelling." Thus, even assuming arguendo that ACCA "burglary" is narrower than certain state statutes in some respects, see pp. 33-36, *infra*, any analysis of the common area of overlap would include the sorts of structures at issue here.

The broad consensus in 1986 that burglary included nonpermanent or mobile structures adapted or used for overnight accommodation was a manifestation of the widespread judgment that burglary law "protects the humble tenant in his tent as well as his more fortunate neighbor in his palace." *Favro* v. *State*, 46 S.W. 932, 933 (Tex. Crim. App. 1898); see also *Stitt* Pet. App. 53a (Sutton, J., dissenting) (observing that by 1984, "the consensus of the state courts * * * was that tents and vehicles designed and used for human accommodation count as dwellings" that may be burglarized); *Kanaras* v. *State*, 460 A.2d 61, 71 (Md. Ct. Spec. App. 1983) ("[T]he crucial factor in determining whether a particular enclosure is a dwelling house is not whether the location is a formal traditional mortar and brick type of structure, but rather whether it is a place intended to be used, and in fact is used, as an abode and place for humans to sleep."); *People* v. *Netznik*, 383 N.E.2d 640, 643 (Ill. App. Ct. 1978) ("[T]he provision was intended to secure the person or property of a tent-dweller or camper in the use of his tent to the same extent it secures that of an owner in the use of his house, church or shop."); *People* v. *Winhoven*, 237 N.W.2d 540, 542-543 (Mich. Ct. App. 1975) ("When a mobile home is used as a person's principal residence, it more nearly fits within the meaning of the dwelling house statute than the house trailer statute.") (footnote omitted).

That makes good sense, as the degree of danger and culpability associated with the burglary of someone's home does not turn on whether the home is permanently tethered to the ground. See pp. 24-27, *infra*. The decisions below erred in viewing Congress to have silently rejected the considered approach of nearly every State in favor of an idiosyncratic one under which the lion's share of state burglary laws would not be "burglary." Such a constricted definition does not reflect "the generic sense in which the term is now used in the criminal codes of most States," *Taylor*, 495 U.S. at 598, and it cannot be squared with *Taylor*. See, *e.g.*, *id.* at 593 (rejecting common-law definition of burglary "because few of the crimes now generally recognized as burglaries would fall within the common-law definition").

2. The secondary sources on which Taylor relied confirm that ACCA burglary covers nonpermanent or mobile dwellings

In deriving its "generic contemporary meaning of burglary" from the definitions employed by the States, *Taylor* examined both the Model Penal Code and the 1986 edition of Professor LaFave's treatise on substantive criminal law. See 495 U.S. at 598 & n.8. Each of those sources reinforces that *Taylor*'s definition of the locational element of ACCA burglary to include a "building or structure" encompasses nonpermanent or mobile structures adapted or used for overnight accommodation.

a. *Taylor* explained that its definition of generic burglary "approximate[d] [the definition] adopted by the drafters of the Model Penal Code." 495 U.S. at 598 n.8. The Code's definition confirms that *Taylor*'s definition covers the type of structures at issue here.

Since 1980, the Model Penal Code has described burglary as the unlawful entry into "a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein." Model Penal Code § 221.1(1). The phrase "occupied structure," in turn, has encompassed "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." *Id.* § 221.0(1).

The Code's commentary makes clear that, although that definition would not cover burglary of an ordinary motor vehicle or freight car, it would cover burglary of a habitable vehicle like a trailer home. Model Penal Code § 221.1 cmt. 3(b) (1980). The commentary acknowledged that the Code's definition provided "considerably narrower coverage than was achieved by many of the statutes in effect at the time the Model Code was drafted [in 1980], which often extended burglary law to *any* structure or vehicle." *Ibid.* (emphasis added). But even the Code's more limited approach included burglary of locations with "apparent potential for regular occupancy," which the drafters (in accord with state legislatures) viewed as the "intrusions that are typically the most alarming and dangerous." *Ibid.*

Taylor's endorsement of the Model Penal Code's definition of burglary indicates that its similar definition of generic burglary under the ACCA likewise includes vehicles that serve as a person's home. 495 U.S. at 598 n.8; see *Stitt* Pet. App. 43a (White, J., concurring) (acknowledging that "the Model Penal Code's expansive definition of 'occupied structure' provides the strongest support" for the proposition that "generic burglary" protects "such temporary structures as tents and vehicles * * * when used as a habitation."). The contrary

view of the courts below would mean that "the Justices [in *Taylor*] *said* that they were following the Model Penal Code's approach but *did* the opposite," eliminating much of the conduct covered by the Code from the reach of ACCA burglary. *Smith* v. *United States*, 877 F.3d 720, 725 (7th Cir. 2017), petition for cert. pending, No. 17-7517 (filed Jan. 17, 2018). *Taylor*'s definition of burglary—which mirrored the Code's definition, while dropping the "narrow[ing]" language requiring that a "structure" be "occupied," Model Penal Code § 221.1 cmt. 3(b); see *Taylor*, 495 U.S. at 598—should not be read as more limited than the Code's in any relevant respect.

b. *Taylor*'s reliance on Professor LaFave's treatise likewise reinforces the breadth of the phrase—"'building' or 'structure,'" 495 U.S. at 598—that *Taylor* adopted to describe ACCA burglary's locational element.

Taylor cited Section 8.13(c) of the treatise for the proposition that "modern statutes 'typically describe the place [of a burglary] as a "building" or "structure."'" 495 U.S. at 598 (quoting LaFave § 8.13(c)). The LaFave treatise, in turn, observed that those terms "are often broadly construed." LaFave § 8.13(c) & nn.81-82. And the treatise's discussion of those terms confirms that they would encompass nonpermanent or mobile structures adapted or used for overnight accommodation.

In discussing the locational element of "building" or "structure," the LaFave treatise identified statutes from 13 States—Alaska, Arizona, Connecticut, Florida, Georgia, Iowa, Louisiana, Missouri, Montana, New Hampshire, New Jersey, Oregon, and Wyoming—as "typical[]." LaFave § 8.13(c) & nn.81-82. At the time, 12 of those "typical[]" 13 States' burglary statutes included as a type of "building," "structure," "occupied

structure," or "inhabitable structure" at least those nonpermanent or mobile structures adapted or used for overnight accommodation. See App., *infra*, 21a-38a; Ga. Code Ann. § 26-1601 (1983) (defining "burglary" as occurring within "the dwelling house of another or any building, vehicle, railroad car, watercraft or other such structure designed for use as the dwelling of another," or "any other building, railroad car, aircraft, or any room or any part thereof"); see also *United States* v. *Grisel*, 488 F.3d 844, 857 n.7 (9th Cir.) (en banc) (Bea, J., dissenting), cert. denied, 552 U.S. 970 (2007). The 13th State, Florida, also criminalized the burglary of such locations, albeit using the term "conveyance." Fla. Stat. § 810.02(1) (1985) (defining "[b]urglary" to include the "entering or remaining in a structure or a conveyance with the intent to commit an offense therein"); *id.* § 810.011(1) (defining "[s]tructure" as "a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof"); *id.* § 810.011(3) (defining "[c]onveyance" as "any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car").

Notwithstanding that *none* of the statutes that the LaFave treatise described as "typical[]" limited burglary to permanent or immovable buildings or structures, the majority in *Stitt* nonetheless viewed the treatise to support such a limitation. See *Stitt* Pet. App. 10a-11a. It focused (*ibid.*) on the fact that the treatise, after explaining that modern statutes "typically describe the place [that is burglarized] as a 'building' or 'structure,'" stated that some jurisdictions had extended their "burglary statutes * * * to still other places, such as all or some types of vehicles." LaFave § 8.13(c).

The *Stitt* majority erred in viewing that latter statement as a late-breaking repudiation of the treatise's earlier empirical examination of the "typical[]" breadth of the terms "building" and "structure." LaFave § 8.13(c). Instead, the treatise is best read as distinguishing between statutes that cover vehicular homes, of which the treatise approved, and those that cover *all* vehicles, of which it did not. The treatise recognized that covering vehicles "may make sense in some circumstances, as where the vehicle is a motor home." LaFave § 8.13(c) n.85. The treatise then cited, as a model example, a Wisconsin burglary statute that protected, among other locations, "[a] motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home." Wis. Stat. Ann. § 943.10(1)(e) (West 1982); see *id.* § 340.01(33m) (West 1971) (defining "[m]otor home" as "a motor vehicle designed to be operated upon a highway for use as a temporary or recreational dwelling and having the same internal characteristics and equipment as a mobile home"). By contrast, the LaFave treatise provided a single example of a "situation[that] ought not be treated as burglary"—namely, a case involving a defendant's "opening [the] hood of [a] car and taking [the] battery." LaFave § 8.13(c) n.85 (citing *State* v. *Pierre*, 320 So. 2d 185 (La. 1975)). Those facts fall far afield from anything at issue here.

3. Taylor's discussion of the ACCA's design reinforces that its definition of burglary covers nonpermanent or mobile dwellings

Taylor's definition of generic burglary also took account of Congress's design in enacting and expanding

the ACCA. That consideration, as well, supports the inclusion of mobile or nonpermanent dwellings within the locational element of ACCA burglary.

As the Court in *Taylor* explained, Congress in 1984 was disturbed by statistics showing that a relatively small number of career criminals commit a large percentage of burglary and robbery offenses. See 495 U.S. at 581. Congress thus singled out those two offenses as sentence-enhancing predicates in the original version of the ACCA. See ACCA, 98 Stat. 2185 (repealed by FOPA § 104(b), 100 Stat. 459). And when Congress amended ACCA's list of explicitly included offenses in 1986, it maintained burglary as the first such crime. See 18 U.S.C. 924(e)(2)(B)(ii) (listing "burglary, arson, * * * extortion," and offenses "involv[ing] use of explosives").

Taylor explained that Congress focused on burglary because of the crime's "inherent potential for harm to persons," 495 U.S. at 588, especially in the context of home invasions. Congress viewed burglary as "one of the 'most damaging crimes to society' because it involves 'invasion of [victims'] homes or workplaces, violation of their privacy, and loss of their most personal and valued possessions.'" *Id.* at 581 (quoting House Report 3). And Congress recognized that burglary offenses create the possibility of violent confrontation "depending on the fortuitous presence of the occupants of the home when the burglar enters." *Ibid.* (quoting Senate Report 4); see *id.* at 585 (discussing similar statements during hearings on 1986 amendments). Congress accordingly ensured that a history of such offenses would trigger enhanced punishment under the ACCA. See *id.* at 581-582.

Congress's concerns about home invasions apply equally to the invasion of a mobile home as to the invasion of a colonial-style house. Excluding the former from

the scope of ACCA burglary would leave an untenable gap in the statutory definition of a crime that is committed millions of time times per year and is a common ACCA predicate. See Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Victimization During Household Burglary* 1 (Sept. 2010), https://www.bjs.gov/content/pub/pdf/vdhb.pdf) (noting that an estimated 3.7 million burglaries occurred each year on average from 2003 to 2007). Approximately 8.5 million of the housing units in the United States (roughly 6.4% of all such units) are mobile homes. See American FactFinder, U.S. Census Bureau, *Selected Housing Characteristics, 2011-2015 American Community Survey 5-Year Estimates* 1, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. And studies suggest that mobile homes are just as likely as immovable dwellings to be the target of a violent crime or property offense. See William P. McCarty, *Trailers and Trouble? An Examination of Crime in Mobile Home Communities*, Cityscape: A Journal of Policy Development and Research, Vol. 12, No. 2, at 137 (2010) (finding "no statistically significant difference in the rates of crime between blocks with mobile home communities, blocks adjacent to mobile home communities, and all other residential blocks" in Omaha, Nebraska), https://www.huduser.gov/portal/periodicals/cityscpe/vol12num2/ch7.pdf.

Home invasion is in no way a lesser crime when the home is nonpermanent or can be moved. To the contrary, "the unique wounds caused by residential burglary are independent of the size or construction of the dwelling. They are the same for the mansion house and the boarding house, the tract home and the mobile

home." *United States* v. *Rivera-Oros*, 590 F.3d 1123, 1130 (10th Cir. 2009). Indeed, "the burglary of a mobile home or camper is often likely to pose a *greater* risk of violence to the occupant or owner than the burglary of a building or house because it is more difficult for the burglar to enter or escape unnoticed." *United States* v. *Spring*, 80 F.3d 1450, 1462 (10th Cir.) (citation omitted) (emphasis added), cert. denied, 519 U.S. 963 (1996). Thus, Congress would have had no reason to think that habitual criminals who burglarize nonpermanent or mobile homes are any less dangerous or deserving of punishment than those who burglarize other types of homes. Cf. *Collins* v. *Virginia*, 138 S. Ct. 1663, 1675 (2018) (rejecting proposed rule that would have made the degree of Fourth Amendment protection turn on whether the homeowner has "the financial means to afford [a] residence[] with [a] garage[]").

4. Taylor's rejection of limiting constructions of "burglary" supports a similar rejection of the limiting construction adopted below

In defining "burglary" for purposes of the ACCA, *Taylor* rejected narrower interpretations that had been adopted by some courts of appeals and advanced by the petitioner in that case. 495 U.S. at 591-598. Its reasons for doing so support a similar rejection of the cramped interpretation adopted by the courts below here.

a. *Taylor* first rejected the approach of courts of appeals that had limited ACCA burglary to "the common-law definition" of the crime, 495 U.S. at 593, *i.e.*, "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony," *id.* at 580 n.3 (citation omitted). The Court acknowledged that the approach "ha[d] some appeal, in that common-law burglary is the core, or common denominator, of the

contemporary usage of the term." *Id.* at 592. But the Court in *Taylor* found it too narrow, observing that the "arcane distinctions embedded in the common-law definition have little relevance to modern law enforcement concerns" that animated the ACCA. *Id.* at 593. The Court additionally observed that because most States had expanded their definitions of burglary to cover, for example, "structures other than dwellings," "few of the crimes now generally recognized as burglaries would fall within the common-law definition." *Id.* at 593-594.

As Judge Sutton explained in his dissenting opinion in *Stitt*, *Stitt* Pet. App. 45a-46a, 52a-55a, the problem *Taylor* identified with limiting ACCA burglary to its common-law "core," 495 U.S. at 592, exists to an even greater degree in the limiting construction adopted by the courts below in these cases. Even with all of the constraints on common-law burglary, its locational element still encompassed "dwellings." *Id.* at 592-593. The ancient English interpretation of "dwellings" included certain archaic limitations: Blackstone, for example, excluded "tents erected in public markets," *Stitt* Pet. App. 53a (Sutton, J., dissenting), and, "for obvious reasons," "no account" of the ancient English "common law discusses mobile homes and self-propelled vehicles," *id.* at 41a (White, J., concurring). But by the time Congress enacted the ACCA in 1984, "there was no question that tents and vehicles designed and used for human accommodation qualified as dwellings." *Id.* at 54a (Sutton, J., dissenting); see *ibid.* ("Let them live in 'mansion houses' may have been an answer to those who wanted the protection of the burglary laws for lesser dwellings a long time ago. But that has not been true for many decades.").

Taylor's construction of ACCA burglary to reflect modern law's expansion of that crime to "structures *other than* dwellings," 495 U.S. at 593 (emphasis added), necessarily suggests that ACCA burglary incorporates the more expansive modern view of "dwellings" as well. As the Court recognized in *Taylor*, "[w]hatever else the Members of Congress might have been thinking of, they presumably had in mind at least the 'classic' common-law definition when they considered the inclusion of burglary as a predicate offense." *Ibid.* It would be anomalous to construe generic burglary to encompass a vast number of *non*-dwellings, while declining to recognize that modern law, technology, and practices have expanded generic burglary's dwelling-focused "core" as well. *Taylor*'s analysis dictates that Congress must have intended, at a minimum, for burglary of a modern-day dwelling to be burglary under the ACCA. See *United States* v. *Herrold*, 883 F.3d 517, 550 (5th Cir. 2018) (Haynes, J., dissenting) (reasoning that "excluding a dwelling on the basis of whether it has (or, at some time, had) wheels" would be "invoking one of those very 'arcane technicalities'" of the common-law that *Taylor* rejected), petition for cert. pending, No. 17-1445 (filed Apr. 18, 2018), and petition for cert. pending, No. 17-9127 (filed May 21, 2018).

b. *Taylor* also rejected a "narrowing construction of the term 'burglary,'" offered by the petitioner in that case, that would have limited it to crimes that have "'as an element necessary for conviction conduct that presents a serious risk of physical injury to another.'" 495 U.S. at 596 (citation omitted). The petitioner provided, as "examples * * * that would fit" his definition, "first-degree or aggravated-burglary statutes having elements such as entering an occupied building; being

armed with a deadly weapon; or causing or threatening physical injury to a person." *Ibid.* The Court acknowledged that the petitioner's interpretation would "restrict[] the predicate offense in a manner congruent with the general purpose of the enhancement statute," but it nonetheless rejected the approach as "not supported by the language of the statute or the legislative history." *Id.* at 596-597. In particular, while Congress no doubt intended to capture such "aggravated" or "especially dangerous" burglaries as ACCA predicates, it "presumably realized that the word 'burglary' is commonly understood to include not only [those] aggravated burglaries, but also run-of-the-mill burglaries." *Id.* at 597.

The home-invasion form of burglary at issue here is precisely the sort of "aggravated" or "especially dangerous" type of burglary, *Taylor*, 495 U.S. at 596-597, whose inclusion under the ACCA was taken as a given in *Taylor*. It is "common for burglary statutes to provide that if the offense was against a dwelling, then that fact either in isolation or in combin[ation] with other aggravating factors will make the crime a higher grade than it would otherwise be." 3 Wayne R. LaFave, *Substantive Criminal Law* § 21.1(c) (2d ed. 2003) (LaFave 2003); see LaFave § 8.13(c) ("There is no jurisdiction which retains the common-law requirement that the offense take place against a dwelling house or building within its curtilage for all degrees of the offense, though some require that the offense be against a dwelling house for a higher grade of the offense."). Treating that fact as an aggravator recognizes that home invasions are especially dangerous because "[a] person would likely be present where the person is living." *Herrold*, 883 F.3d at 550 (Haynes, J., dissenting).

As the legislatures of Tennessee, Arkansas, and many other States have recognized, the inherent danger of a home invasion is present "irrespective of whether" the burglar invades "a traditional home or a 'vehicle adapted for overnight accommodation.'" *Herrold*, 883 F.3d at 550 (Haynes, J., dissenting). And excluding the invasion of such homes from ACCA burglary would produce "head-scratching" results. *Stitt* Pet. App. 50a (Sutton, J., dissenting). As Judge Sutton pointed out, on the courts of appeals' view, an aggravated home-invasion burglary crime would not count as ACCA burglary if it included mobile homes, while a lesser grade of building burglary that included, for example, "tool sheds," would. *Ibid.*; see *Herrold*, 883 F.3d at 550 (Haynes, J., dissenting) (similar). Congress could not have intended such a counterintuitive result, and it is inconsistent with *Taylor*'s construction of ACCA burglary to include *both* "aggravated" *and* "run-of-the-mill" burglaries, 495 U.S. at 597.

B. The Decisions Below Misconstrued The ACCA And This Court's Decisions

The Tennessee and Arkansas statutes at issue here criminalize just the sort of home invasions that lie at the "heart of the crime" of burglary, *Stitt* Pet. App. 51a (Sutton, J., dissenting), as defined in *Taylor*. The courts below erred in reading this Court's decisions to require a crabbed construction of ACCA burglary that both devalues the invasions of particular homes and is consistent with, at most, the outlier views of seven States (some of which still adhered to the outdated common-law definition) at the time the relevant language was enacted. See *Smith*, 877 F.3d at 724 ("[I]t [is] unlikely that the Justices set out in *Taylor* to adopt a definition of generic burglary that is satisfied by no more than a

handful of states—if by any."); *Herrold*, 883 F.3d at 550 (Haynes, J., dissenting) ("To say a traditional home is protected by ACCA enhancements whereas a mobile home is not simply does not comport with Congress's intent and *Taylor*'s reasoning.").

1. The statutes underlying respondents' prior convictions prohibit burglary within "the generic sense in which the term [was] used in the criminal codes of most States," *Taylor*, 495 U.S. at 598.

The Tennessee aggravated-burglary statute criminalizes burglary of a "habitation," Tenn. Code. Ann. § 39-14-403(a) (1997), defined as a "structure, including buildings, module units, mobile homes, trailers, and tents, which is designed or adapted for the overnight accommodation of persons" or a "self-propelled vehicle that is designed or adapted for the overnight accommodation of persons and is actually occupied at the time of initial entry by the defendant," *id.* § 39-14-401(1)(A)-(B) (Supp. 2001); see *id.* § 39-14-401(1)(C). The Arkansas aggravated-burglary statute criminalizes burglary of a "residential occupiable structure," Ark. Code Ann. § 5-39-201(a)(1) (2013), defined as "a vehicle, building or other structure: (i) In which any person lives; or (ii) That is customarily used for overnight accommodation of a person whether or not a person is actually present," *id.* § 5-39-101(4)(A). For all the reasons discussed above, such residential-burglary crimes qualify as generic burglary under the ACCA.

The Tennessee and Arkansas laws are classic prohibitions against home invasions. They criminalize serious and dangerous conduct that nearly every State in 1986, and nearly every State now, would recognize as burglary. Neither *Taylor* nor any other decision of this

Court provides a basis for nonetheless deeming convictions under those statutes not to be convictions for "burglary" under the ACCA.

2. The courts below did not dispute that *Taylor*'s definition of burglary was meant to reflect the "generic sense" in which "most States" defined the term, 495 U.S. at 598. But they focused instead on *Taylor*'s statement that "[a] few States' burglary statutes * * * define[d] burglary more broadly, *e.g.*, by * * * including places, such as automobiles and vending machines, other than buildings," *id.* at 599. They read that statement, in combination with statements in other cases involving burglary statutes covering vehicles, to compel the conclusion that *Taylor* and its progeny exclude from generic burglary *all* statutes reaching *any* type of vehicle. See *Stitt* Pet. App. 5a-7a; *Sims* Pet. App. 4a-5a. That reading is unsound.

As a threshold matter, the courts of appeals' view disregards the empirical grounding and legal backdrop of *Taylor*. As previously discussed, the Court's reference to the "generic sense in which the term [burglary] is now used in the criminal codes of most States," 495 U.S. at 598, would have encompassed invasions of mobile or nonpermanent dwellings. The Court's mention of "[a] *few* States' burglary statutes" that were overbroad as to location, *id.* at 599 (emphasis added), provides no support for an interpretation of ACCA burglary that would exclude the burglary statutes of the *vast majority* of jurisdictions.

Furthermore, as Judge Sutton pointed out (*Stitt* Pet. App. 48a), the lower courts' interpretation makes "the mistake of reading an opinion (in truth part of an opinion) like a statute." See *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 341 (1979) ("[T]he language of an opinion

is not always to be parsed as though we were dealing with language of a statute."). When this Court has stated that generic burglary cannot be committed in an automobile or vessel, it has had before it burglary statutes that covered *all* such locations. The courts below nevertheless assumed that when this Court discussed "automobiles" or "vessels," it meant to exclude from generic burglary all statutes addressing any such vehicles, no matter the limits of the particular state provision. That assumption was mistaken.

Since its inception, this Court has consistently instructed that its general statements must be considered in the context in which they were made. See, *e.g.*, *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264 (1821) (Marshall, C.J.) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.") (quoted in *Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 363 (2006)). None of the statements on which the courts below relied, however, arose in a context in which the Court was considering a burglary statute that covered vehicles only to the extent that they are inhabited or habitable. Cf. *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 63 n.4 (1989) ("[T]he Court did not address the meaning of person in any of those cases, and in none of the cases was resolution of that issue necessary to the decision.").

The *Stitt* majority observed that *Taylor* "offer[ed]" the California and Texas burglary prohibitions—"both of which criminalize the unauthorized entry of vehicles—as examples of overly broad burglary definitions." *Stitt*

Pet. App. 6a (citing 495 U.S. at 591). But at the time of *Taylor*, both California and Texas burglary "covered all vehicles, and so [their provisions] were clearly not generic under *Taylor*." *Id.* at 49a (Sutton, J., dissenting) (emphasis omitted).[2] Similarly, *Taylor* noted that "[o]ne of Missouri's second-degree burglary statutes in effect at the times of petitioner Taylor's convictions," which "included breaking and entering 'any booth or tent, or any boat or vessel, or railroad car,'" encompassed some nongeneric forms of burglary. 495 U.S. at 599 (quoting Mo. Rev. Stat. § 560.070 (1969) (repealed)); see *id.* at 606. But *Taylor* had no occasion to consider whether a more finely tuned burglary statute, limited to mobile dwellings like motor homes and houseboats, satisfied its generic definition.

The reliance of the courts below on statements in subsequent decisions of this Court to the effect that generic burglary does not encompass unlawful entry into "vehicles," "automobiles," and "vessel[s]" is similarly misplaced. See *Stitt* Pet. App. 4a-5a, 6a-7a; *Sims*

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[2] Texas had adopted three burglary provisions, covering burglary of a habitation or building (Tex. Penal Code Ann. § 30.02 (West 1989)), burglary of coin-operated or coin collection machines (*id.* § 30.03), and burglary of vehicles (*id.* § 30.04). It appears that *Taylor*'s discussion referenced the vehicular-burglary provision. See 495 U.S. at 591 (citing *United States* v. *Leonard*, 868 F.2d 1393, 1395 n.2 (5th Cir. 1989), cert. denied, 496 U.S. 904 (1990)). Citing Texas's definitional provision, LaFave similarly listed Texas as an example of a jurisdiction that had extended its burglary statute to vehicles. See LaFave § 8.13(c) n.85 (citing Tex. Penal Code Ann. § 30.01 (West 1989)). Subsequent editions of the treatise suggest that LaFave intended to highlight the specific provision (Tex. Penal Code Ann. § 30.04 (West 1989)) addressing "[b]urglary of [v]ehicles," because they refer to a case applying that provision. See LaFave 2003 § 21.1(c) n.91 (citing *Richardson* v. *State*, 888 S.W.2d 822 (Tex. Crim. App. 1994) (en banc)).

Pet. App. 4a-5a. None of those cases involved a statute limiting its coverage of vehicles, automobiles, or vessels to those adapted or used for overnight accommodation. See *Mathis* v. *United States*, 136 S. Ct. 2243, 2250 (2016) (statute covering "any building, structure, [or] land, water, or air vehicle") (citation and emphasis omitted; brackets in original); *Nijhawan* v. *Holder*, 557 U.S. 29, 35 (2009) (statute covering a "building, ship, vessel or vehicle") (citation omitted); *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 186-187 (2007) (noting *Shepard*'s consideration of a statute covering breaking into both a "building" and a "vehicle") (citation omitted); *Shepard* v. *United States*, 544 U.S. 13, 15-16 (2006) (considering statute that reached both buildings and vehicles, and stating that "[t]he [ACCA] makes burglary a violent felony only if committed in a building or enclosed space ('generic burglary'), not in a boat or motor vehicle").[3] They accordingly do not support the rule that the courts below adopted here.

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[3] In his brief in opposition, respondent Sims emphasized (at 6-7) this Court's recent decision in *Mathis*. There, the Court agreed with the parties that an Iowa burglary statute that proscribed unlawful entry into "any * * * land, water or air vehicle * * * adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value," Iowa Code Ann. § 702.12 (West 2013), "reaches a broader range of places" than generic burglary. *Mathis*, 136 S. Ct. at 2250; see *Herrold*, 883 F.3d at 537-538 (relying on *Mathis*). But because "the Iowa statute * * * included vehicles used for storage," the understanding that it was broader than generic burglary does not establish that a burglary statute tailored to mobile habitations, like Tennessee's or Arkansas's, is non-generic. *Herrold*, 883 F.3d at 551 (Haynes, J., dissenting).

3. The majority in *Stitt* also supported its distinction between different types of homes by reading into *Taylor*'s definition of burglary an "emphasi[s]" on "a place's form and nature—not its intended use or purpose." *Stitt* Pet. App. 5a. That formalistic dichotomy, however, has no foundation in *Taylor*'s use of the phrase "building or other structure." *Ibid.* (citation omitted).

A structure used or adapted as a home will necessarily differ from one that is not in both function *and* form. A place's "form and nature," *Stitt* Pet. App. 5a, will always reflect its "intended use or purpose," *ibid.*, to at least some degree. As Judge Sutton observed, "form follows function, making it impossible for any definition of burglary to avoid functional considerations." *Id.* at 50a (Sutton, J., dissenting) (emphasis omitted). A houseboat, for example, is different, in both form and function, from a speedboat. And a terrestrial mobile home is likewise different from other types of vehicles. See *Grisel*, 488 F.3d at 855 n.2 (Bea, J., dissenting) ("The analysis quite properly focuses on both the *nature* and *use* of the structure because there is no difference between the two. The nature of a home or an RV is to provide shelter to persons; the use of a home or an RV is to provide shelter to persons.").

The differences in form that are coextensive with a structure's adaptation or use as a dwelling, moreover, are directly related to the danger that a burglary of that structure would present. For example, the structure will almost invariably have some sort of sleeping area, in which a person may be at rest when the burglar enters. Indeed, by disregarding the inseparability of form and function, the approach of the decisions below reaches the incongruous result of treating burglary of a

"gazebo[]," *Stitt* Pet. App. 50a (Sutton, J., dissenting), but not burglary of a trailer home, as a violent felony.

4. The *Stitt* majority also relied on the definition of burglary in the pre-amendment 1984 version of the ACCA, which included the word "building" but not the word "structure." *Stitt* Pet. App. 9a. But whatever weight the Court might have attached to that terminological choice, had it been called upon to interpret that since-deleted language directly, *Taylor* did not treat it as a limitation on the scope of generic burglary under the current version of the ACCA. Although *Taylor* described its definition of generic burglary as "practically identical to the 1984 definition," 495 U.S. at 598, the deletion of which it viewed as potentially inadvertent, see *id.* at 589-590 & n.5, it explicitly adopted a definition that reached "building[s] *or other structure[s]*," *id.* at 598 (emphasis added). See *Shepard*, 544 U.S. at 16 (describing generic burglary as unlawful entry into a "building *or enclosed space*") (emphasis added).

The Court did so based on a determination that "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States," *Taylor*, 495 U.S. at 598; the understanding that contemporary state statutes "typically describe[d] the place [that is burglarized] as a 'building' or 'structure,'" *ibid.* (quoting LaFave § 8.13(c)); and reliance on both a treatise recognizing the typical breadth of those terms and a Model Penal Code definition that used similar terms to encompass burglary of a mobile or nonpermanent dwelling, see *id.* at 598 & n.8; pp. 18-24, *supra*. The courts below erred in nevertheless excising such crimes from the scope of ACCA burglary, leaving behind a highly stylized definition that covers almost no state crimes.

CONCLUSION

The judgments of the court of appeals should be reversed and the cases remanded for further proceedings.

Respectfully submitted.

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APPENDIX A

1. 18 U.S.C. 924 provides:

Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party,

other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951

et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the

same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(*l*) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(*o*) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

2. Tenn. Code Ann. § 39-14-401 (Supp. 2001) provides:

Definitions for burglary and related offenses.—As used in this part, unless the context otherwise requires:

(1) "Habitation":

(A) Means any structure, including buildings, module units, mobile homes, trailers, and tents, which is designed or adapted for the overnight accommodation of persons;

(B) Includes a self-propelled vehicle that is designed or adapted for the overnight accommodation of persons and is actually occupied at the time of initial entry by the defendant; and

(C) Includes each separately secured or occupied portion of the structure or vehicle and each structure appurtenant to or connected with the structure or vehicle;

(2) "Occupied" means the condition of the lawful physical presence of any person at any time while the defendant is within the habitation or other building; and

(3) "Owner" means a person in lawful possession of property, whether the possession is actual or constructive. "Owner" does not include a person, who is restrained from the property or habitation by a valid court order or order of protection, other than an ex parte order of protection, obtained by the person maintaining residence on the property.

3. Tenn. Code Ann. § 39-14-402 (1997) provides:

Burglary.—(a) A person commits burglary who, without the effective consent of the property owner:

(1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault;

(2) Remains concealed, with the intent to commit a felony, theft or assault, in a building;

(3) Enters a building and commits or attempts to commit a felony, theft or assault; or

(4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other motor vehicle with intent to commit a felony, theft or assault or commits or attempts to commit a felony, theft or assault.

(b) As used in this section, "enter" means:

(1) Intrusion of any part of the body; or

(2) Intrusion of any object in physical contact with the body or any object controlled by remote control, electronic or otherwise.

(c) Burglary under subdivision (a)(1), (2) or (3) is a Class D felony.

(d) Burglary under subdivision (a)(4) is a Class E felony.

4. Tenn. Code Ann. § 39-14-403 (1997) provides:

Aggravated burglary.—(a) Aggravated burglary is burglary of a habitation as defined in §§ 39-14-401 and 39-14-402.

(b) Aggravated burglary is a Class C felony.

5. Ark. Code Ann. § 5-39-101 (Michie 1997) provides:

Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Residential occupiable structure" means a vehicle, building, or other structure:

(A) Where any person lives; or

(B) Which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a residential occupiable structure divided into separately occupied units is itself a residential occupiable structure.

(2) "Commercial occupiable structure" means a vehicle, building, or other structure:

(A) Where any person carries on a business or other calling; or

(B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation.

(3) "Premises" means occupiable structures and any real property.

(4) "Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to do so. A person who enters or remains in or upon premises that are at the time open to the public does so with license and privilege, regardless of his purpose, unless he defies a lawful order not to enter or remain personally communicated to him by the owner of the premises or some other person authorized by the owner. A license or privilege to enter or remain in or upon premises only part of which are open to the public is not a license or privilege to enter or remain in a part of the premises not open to the public. A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice not to enter or remain is personally communicated to him by the owner or some person authorized by the owner, or unless notice is given by posting in a conspicuous manner.

(5) "Vehicle" means any craft or device designed for the transportation of people or property across land or water or through the air.

6. Ark. Code Ann. § 5-39-101 (2013) provides:

Definitions.

As used in this chapter:

(1) "Commercial occupiable structure" means a vehicle, building, or other structure in which:

(A) Any person carries on a business or other calling; or

(B) People assemble for a purpose of business, government, education, religion, entertainment, or public transportation;

(2)(A) "Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to enter or remain in or upon the premises.

(B)(i) A person who enters or remains in or upon premises that are at the time open to the public does so with license and privilege, regardless of his or her purpose, unless he or she defies a lawful order not to enter or remain on the premises personally communicated to the person by the owner of the premises or another person authorized by the owner.

(ii) A license or privilege to enter or remain in or upon premises only part of which are open to the public is not a license or privilege to enter or remain in a part of the premises not open to the public.

(C) A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude an intruder does so with license and privilege unless:

(i) Notice not to enter or remain is personally communicated to the person by the owner or a person authorized by the owner; or

(ii) Notice is given by posting in a conspicuous manner;

(3) "Premises" means an occupiable structure and any real property;

(4)(A) "Residential occupiable structure" means a vehicle, building, or other structure:

(i) In which any person lives; or

(ii) That is customarily used for overnight accommodation of a person whether or not a person is actually present.

(B) "Residential occupiable structure" includes each unit of a residential occupiable structure divided into a separately occupied unit; and

(5) "Vehicle" means any craft or device designed for the transportation of a person or property across land or water or through the air.

7. Ark. Code Ann. § 5-39-201 (Michie 1997) provides:

Residential burglary—Commercial burglary.

(a)(1) A person commits residential burglary if he enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing therein any offense punishable by imprisonment.

(2) Residential burglary is a Class B felony.

(b)(1) A person commits commercial burglary if he enters or remains unlawfully in a commercial occupiable structure of another with the purpose of committing therein any offense punishable by imprisonment.

(2) Commercial burglary is a Class C felony.

8. Ark. Code Ann. § 5-39-201 (2013) provides:

Residential burglary—Commercial burglary.

(a)(1) A person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.

(2) Residential burglary is a Class B felony.

(b)(1) A person commits commercial burglary if he or she enters or remains unlawfully in a commercial occupiable structure of another person with the purpose of committing in the commercial occupiable structure any offense punishable by imprisonment.

(2) Commercial burglary is a Class C felony.

APPENDIX B

State Burglary Statutes at the Time of 18 U.S.C. 924(e)(2)(B)(ii)'s Enactment (Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39)

* Statutes encompassing nonpermanent or mobile structures irrespective of their purpose

† Statutes encompassing nonpermanent or mobile structures used for enumerated purposes

‡ Statutes adhering to the common-law definition of burglary

§ Statutes broader than the common-law definition that exclude or do not specifically address nonpermanent or mobile structures

Alabama†	Ala. Code §§ 13A-7-5, 13A-7-6, 13A-7-7 (1982) (defining burglary as involving a "dwelling" or "building"); *id.* § 13A-7-1(2) (Supp. 1983) (defining building as "[a]ny structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, * * * includ[ing] any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein").

Alaska†	Alaska Stat. §§ 11.46.300, 11.46.310 (1983) (defining burglary as involving a "building"); *id.* § 11.81.900 (Supp. 1985) (defining building to include, "in addition to its usual meaning, * * * any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business").
Arizona†	Ariz. Rev. Stat. Ann. § 13-1506 (Supp. 1981) (defining third-degree burglary as involving "a nonresidential structure"); *id.* § 13-507 (defining second-degree burglary as involving "a residential structure"); *id.* § 13-501(7) (1978) (defining "[r]esidential structure" as "any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not"); *id.* § 13-1501(8) (defining "[s]tructure" as "any building, object, vehicle, railroad car or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage").

Arkansas†	Ark. Stat. Ann. §§ 41-2001, 41-2002 (1977) (defining burglary as involving an "occupiable structure," *i.e.*, "a vehicle, building, or other structure: (a) where any person lives or carries on a business or other calling; * * * (b) where people assemble for purpose of business, government, education, religion, entertainment, or public transportation; or (c) which is customarily used for overnight accommodation of persons").
California*	Cal. Penal Code § 459 (Deering 1985) (defining burglary as involving "any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse[,] or other building, tent, vessel, railroad car, locked or sealed cargo container * * * , trailer coach * * * , any house car * * * , inhabited camper * * * , vehicle * * * when the doors of such vehicle are locked, aircraft * * * , [or] mine").
Colorado†	Colo. Rev. Stat. §§ 18-4-101, 18-4-202, 18-4-203 (1986) (defining first- and second-degree burglary as involving a "building or

	occupied structure," *i.e.*, "a structure which has the capacity to contain, and is designed for the shelter of, man, animals, or property, * * * includ[ing] a ship, trailer, sleeping car, airplane, or other vehicle or place adapted for overnight accommodations of persons or animals, or for carrying on of business therein" (building) or "any area, place, facility, or enclosure which * * * is in fact occupied by a person or animal, and known by the defendant to be thus occupied" (occupied structure)).
Connecticut*	Conn. Gen. Stat. Ann. § 53a-103 (West 1972) (defining burglary as involving a "building"); *id.* § 53a-100(a)(1) (West Supp. 1985) (defining building to include, "in addition to its ordinary meaning, * * * any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle").
Delaware*	Del. Code Ann. tit. 11, §§ 221(1), 824-825 (1979) (defining burglary as involving, *inter alia*, a "building," defined to include, "in addition to its ordinary meaning, * * * any structure, vehicle or watercraft").

District of Columbia*	D.C. Code Ann. § 22-1801(b) (1973) (defining burglary as involving "any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, * * * any steamboat, canalboat, vessel, or other watercraft, or railroad car or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade").
Florida*	Fla. Stat. chs. 810.011, 810.02(1) (1985) (defining burglary as involving "a structure or a conveyance," *i.e.*, "a building of any kind, either temporary or permanent, which has a roof over it" (structure) or "any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car" (conveyance)).
Georgia†	Ga. Code Ann. § 16-7-1 (Michie 1984) (defining burglary as involving "the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another").
Hawaii†	Haw. Rev. Stat. §§ 708-800, 708-810, 708-811 (1985) (defining

	burglary as involving a "building," *i.e.*, "any structure, [or] * * * any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein").
Idaho*	Idaho Code § 18-1401 (Supp. 1981) (defining burglary as involving a "house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, closed vehicle, closed trailer, airplane or railroad car").
Illinois*	Ill. Rev. Stat. ch. 38, paras. 2-6, 19-1(a), 19-3(a) (1983) (defining burglary as involving a "building, housetrailer, watercraft, aircraft, motor vehicle[,] * * * [or] railroad car," and defining residential burglary as involving a "dwelling," *i.e.*, "a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation").
Indiana[§]	Ind. Code Ann. § 35-43-2-1 (Burns Supp. 1984) (defining burglary as involving a "building or structure" without further defining those terms); see also *McCormick* v. *State*, 382 N.E.2d 172, 174-176 & nn.1-2 (Ind. Ct. App.

	1978) (noting that, until 1976, Indiana separately criminalized burglary of any boat, railroad car, automobile, or building other than a dwelling).
Iowa†	Iowa Code §§ 702.12, 713.1-713.6 (1985) (defining burglary as involving an "occupied structure," *i.e.*, "any building, structure, * * * land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value," but not an "object or device * * * too small or not designed to allow a person to physically enter or occupy it").
Kansas*	Kan. Stat. Ann. § 21-3715 (Supp. 1974) (defining burglary to involve a "building, mobile home, tent or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property").
Kentucky†	Ky. Rev. Stat. Ann. §§ 511.010, 511.020, 511.030 (Michie 1985) (defining burglary as involving a

	"building" or "dwelling," defined to include, "in addition to its ordinary meaning, * * * any structure, vehicle, watercraft or aircraft (a) [w]here any person lives; or (b) [w]here people assemble for purposes of business, government, education, religion, entertainment or public transportation" (building) or "a building which is usually occupied by a person lodging therein" (dwelling)).
Louisiana*	La. Rev. Stat. Ann. § 14:62 (West 1986) (defining burglary as involving "any dwelling, vehicle, watercraft, or other structure, movable or immovable").
Maine†	Me. Rev. Stat. Ann. tit. 17-A, § 401 (West 1983 & Supp. 1986) (defining burglary as involving a "structure"); *id.* § 2(24) (West 1983) (defining structure as "a building or other place designed to provide protection for persons or property against weather or intrusion, but * * * not includ[ing] vehicles and other conveyances whose primary purpose is transportation of persons or property unless such vehicle or conveyance, or a section thereof, is also a dwelling place").

Maryland[†]	See *Sizemore* v. *State*, 272 A.2d 824, 825-826 (Md. Ct. Spec. App.) (citing Md. Ann. Code art. 27, §§ 29-30, 32-33 (1967), and noting that Maryland "recognizes six separate and distinct crimes related to the breaking of structures," including common-law burglary, daytime housebreaking, and "storehouse breaking," which "cover[s] all buildings other than dwelling houses" but is "not burglary at all"), cert. denied, 261 Md. 728 (1971).
Massachusetts[*]	Mass. Gen. L. ch. 266, § 15 (1986) (defining burglary as involving "a dwelling house"); see *id.* §§ 16, 19, 20A (separately prohibiting the "break[ing] and ent[ry]" into any "building, ship, vessel or vehicle," railroad cars, or any "truck, tractor/trailer unit, trailer, semi-trailer or freight container").
Michigan[*]	Mich. Comp. Laws Ann. § 750.110 (West 1968) (defining breaking and entering to involve an "occupied dwelling," as well as a "tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat or ship, railroad car or

	* * * any unoccupied dwelling house").
Minnesota†	Minn. Stat. §§ 609.581, 609.582 (1986) (defining burglary as involving a "building," defined as "a structure suitable for affording shelter for human beings including any appurtenant or connected structure"); see *State* v. *Vredenberg*, 264 N.W.2d 406, 407 (Minn. 1978) (per curiam) (houseboats' cabins constituted "buildings" under prior version of burglary statute "because they are, in fact, suitable for human shelter").
Mississippi‡	Miss. Code Ann. § 97-17-19 (1973) (defining burglary as involving "any dwelling house").
Missouri†	Mo. Rev. Stat. §§ 569.010, 569.170 (1986) (defining burglary as involving a "building" or "inhabitable structure," *i.e.*, "a ship, trailer, sleeping car, airplane, or other vehicle or structure: (a) Where any person lives or carries on business or other calling; or (b) Where people assemble for purposes of business, government, education, religion, entertainment or public transportation; or (c) Which is used

	for overnight accommodation of persons").
Montana†	Mont. Code Ann. §§ 45-2-101(40), 45-6-204 (1985) (defining burglary as involving an "occupied structure," *i.e.*, a "building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business").
Nebraska§	Neb. Rev. Stat. § 28-507 (1985) (defining burglary as involving "real estate or any improvements erected thereon").
Nevada*	Nev. Rev. Stat. Ann. § 205.060 (Michie 1986) (defining burglary as involving "any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house-trailer, airplane, glider, boat or railroad car").
New Hampshire†	N.H. Rev. Stat. Ann. § 635:1 (1986) (defining burglary as involving a "building or occupied structure," *i.e.*, "any structure, vehicle, boat or place adapted for

	overnight accommodation of persons, or for carrying on business").
New Jersey*	N.J. Stat. Ann. §§ 2C:18-1, 2C:18-2 (West 1982) (defining burglary as involving a "structure," *i.e.*, "any building, room, ship, vessel, car, vehicle or airplane, and also * * * any place adapted for overnight accommodation of persons, or for carrying on business therein").
New Mexico*	N.M. Stat. Ann. § 30-16-3 (Michie 1978) (defining burglary as involving "any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable").
New York†	N.Y. Penal Law § 140.20 (McKinney 1975) (defining burglary as involving a "building"); *id.* § 140.00(2) (McKinney Supp. 1986) (defining building to include, "in addition to its ordinary meaning, * * * any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an inclosed motor truck, or an inclosed motor truck trailer").

North Carolina†	*State* v. *Oakman*, 388 S.E.2d 579, 581 (N.C. Ct. App. 1990) ("North Carolina retains the common law definition of burglary.").
North Dakota†	N.D. Cent. Code §§ 12.1-22-02, 12.1-22-06 (1985) (defining burglary as involving a "building" or "occupied structure," *i.e.*, "a structure or vehicle: a. Where any person lives or carries on business or other calling; or b. Which is used for overnight accommodation of persons").
Ohio†	Ohio Rev. Code Ann. § 2911.12 (Anderson Supp. 1985) (defining burglary as involving an "occupied structure)"; *id.* § 2909.01 (Anderson 1982) (defining occupied structure as "any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, * * * (A) Which is maintained as a permanent or temporary dwelling * * * ; (B) Which at the time is occupied as the permanent or temporary habitation of any person * * * ; (C) Which at the time is specially adapted for the overnight accommodation of any person * * * ;

	[or] (D) In which at the time any person is present or likely to be present").
Oklahoma*	Okla. Stat. Ann. tit. 21, § 1435 (West Supp. 1982) (defining burglary as involving "any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept").
Oregon†	Or. Rev. Stat. §§ 164.205(1), 164.215(1) (1983) (defining burglary as involving a "building," defined to include, "in addition to its ordinary meaning, * * * any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein").
Pennsylvania†	18 Pa. Cons. Stat. Ann. §§ 3501, 3502 (1973) (defining burglary as involving a "building" or "occupied structure," *i.e.*, "[a]ny structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein").

Rhode Island[‡]	R.I. Gen. Laws § 11-8-1 (1981) (common-law definition of burglary).
South Carolina[†]	S.C. Code Ann. §§ 16-11-310(1), 16-11-313 (Law. Co-op. Supp. 1985) (defining burglary as involving a "building," *i.e.*, "any structure, vehicle, watercraft, or aircraft: (a) Where any person lodges or lives; or (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored").
South Dakota[*]	S.D. Codified Laws §§ 22-32-1, 22-32-3, 22-32-8 (1979) (defining burglary as involving a "structure"); S.D. Codified Laws Ann. § 22-1-2(46) (Supp. 1986) (defining structure as "any house, building, outbuilding, motor vehicle, watercraft, aircraft, railroad car, truck, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof").
Tennessee[*]	Tenn. Code Ann. §§ 39-3-401, 39-3-403, 39-3-404, 39-3-406 (1982) (defining burglary as involving "a dwelling house, or any other house, building, room or rooms

	therein used and occupied by any person or persons as a dwelling place or lodging either permanently or temporarily" (general burglary and second-degree burglary); "a business house, outhouse, or any other house of another, other than dwelling house" (third-degree burglary); or "any freight or passenger car, automobile, truck, trailer or other motor vehicle" (breaking into vehicles)).
Texas†	Tex. Penal Code Ann. §§ 30.01, 30.02 (West 1974) (defining burglary as involving a "building" or "habitation," *i.e.*, "a structure or vehicle that is adapted for the overnight accommodation of persons").
Utah†	Utah Code Ann. §§ 76-6-201, 76-6-202 (1978) (defining burglary as involving a "building," defined to include, "in addition to its ordinary meaning, * * * any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodation of persons or for carrying on business").
Vermont§	Vt. Stat. Ann. tit. 13, § 1201 (Supp. 1982) (defining burglary

	as involving a "building or structure" without further defining those terms beyond "their common meanings").
Virginia†	Va. Code Ann. § 18.2-90 (Michie Supp. 1986) (defining burglary as involving "any office, shop, storehouse, warehouse, banking house, or other house, or any ship, vessel or river craft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation").
Washington†	Wash. Rev. Code. § 9A.52.020(1) (1985) (defining first-degree burglary as involving a "dwelling"); *id.* § 9A.04.110 (Supp. 1986) (defining dwelling as "any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging").
West Virginia†	W. Va. Code Ann. § 61-3-11 (Michie 1977) (defining burglary as involving a "dwelling house," which "shall include, but not be limited to, a mobile home, house trailer, modular home or self-propelled motor home, used as a dwelling regularly or only from

	time to time, or any other non-motive vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time").
Wisconsin*	Wisc. Stat. Ann. § 943.10 (West 1982) (defining burglary as involving "[a]ny building or dwelling; * * * enclosed railroad car; * * * enclosed portion of any ship or vessel; * * * [or] motor home or other motorized type of home or a trailer home").
Wyoming*	Wyo. Stat. Ann. § 6-3-301 (Supp. 1986) (defining burglary as involving "a building, occupied structure or vehicle, or separately secured or occupied portion thereof").